imprisonment and a fine. Section 87 of the Courts Ordinance is in the same terms as section 63 of the Courts Ordinance and clearly allows a First Class Magistrate to pass a sentence both of imprisonment and a fine.

In these circumstances, I hold that a First Class Magistrate has jurisdiction to try a case for an offence under the Emergency Regulations, 1951.

My attention has also been drawn to regulation 20A of the Emergency (Criminal Trials) Regulations, 1948. It is sufficient to say that, in my opinion, the meaning of that section is that the High Commissioner may authorise, in writing, any Magistrate to hold a Court to try certain cases as specified in the schedule thereto which are normally outside his territorial jurisdiction.

I have come to the conclusion that this regulation does not affect the right of a Magistrate to try such Emergency cases as are within his jurisdiction in the area where he normally holds jurisdiction.

All the accused in these cases were sentenced to a fine of $75 each, with the exception of one who was fined $10. I am told, and it has not been contradicted by the Deputy Public Prosecutor, that the circumstances were that the labourers on one estate went during curfew hours to another estate to see a private cinema show given by the management of that estate. I have, in fact, been told that they were invited. In order, however, to get from one estate to the other estate they had to pass through a very short part of a curfew area. It is to be noted that all these cases arose out of the same incident and, in all, there were 29 offenders. It is not suggested that these persons had any connection with the terrorists or were doing anything to assist the terrorists. While I agree that a breach of curfew regulations would normally deserve a severe penalty I feel that, in all the circumstances of these cases, a fine of $30 would have been sufficient. I, therefore, order that the amount of all fines in excess of $30 should be refunded to the accused persons.

Order accordingly.

Solicitors: *Bannon & Bailey.*

Re OSMAN BIN ABDULLAH

[A. Cr. J. (Bellamy J.) October 28, 1954]

[K. L. — Criminal Revision No. 35 of 1954]

Criminal law and procedure — Inquiry under Chapter XVII of the Criminal Procedure Code (Cap. 6) — Duty of Magistrate — Assessing evidence.

When all the evidence has been taken, the Magistrate's duty simply is to inquire, whether a *prima facie* case has been made out against the accused by credible evidence. If the answer to this question is in the affirmative, then the Magistrate is bound to commit the accused for trial. On the other hand, if the answer is in the negative, the Magistrate is bound to discharge the accused, unless the evidence discloses an offence over which he has jurisdiction in which case he may either deal with it himself or order it to be tried by another Magistrate. It is no part of the inquiring Magistrate's duty to consider possible lines of defence to the charge which the accused may raise in the course of the inquiry or to decide whether there are sufficient grounds for convicting the accused. That is the function of the trial Court. It is a safe rule that where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving the doubt and assessing the evidence should be left to the Court of a Judge.

Case referred to:—

(1) *In re Bai Parvati* (1911) I.L.R. Bom. 163 at 168.

Cur. Adv. Vult.

CRIMINAL REVISION.

Bellamy J.: — Osman bin Abdullah was brought before the Magistrate in the Magistrate's Court at Rawang with a view to committal for trial before the Court of a Judge on a charge of voluntarily causing grievous hurt to Eric Esme Monteiro by means of an instrument which, used as a weapon of offence, is likely to cause death, an offence under section 326 of the Penal Code. A good deal of evidence was called for the prosecution and the Magistrate, having heard all the evidence tendered, decided not to commit the accused for trial, but instead he framed a charge under section 335 of the Penal Code, and after it had been read over and explained to the accused he ordered the accused to be tried in the Sessions Court at Rawang. The Public Prosecutor now applies under section 325 of the Criminal Procedure Code for revision of this order.

The question before me now is whether this order of the Magistrate should be sustained.

The conclusion at which the Magistrate arrived was expressed by him in these words:—

"From the evidence of P.W. 8 and P.W. 9, two of three neutral eye-witnesses of the incident, it is disclosed that the accused caused grievous hurt to Eric Esme Monteiro — P.W. 6 — only after the latter drew out a penknife from his trouser pocket and tried to stab the accused with it. As it was not proved by the prosecution that the accused was the aggressor in the fight, the provocation (i.e., the attempt to stab the accused with a penknife by P.W. 6) therefore was not sought or voluntarily provoked by the accused as an excuse for causing grievous hurt to P.W. 6. Under the circumstances I feel that the original charge should be reduced to the committing of an offence punishable under section 335 of the Penal Code."

There could be no doubt on the evidence, and the Magistrate rightly found that it had been established, that the accused caused grievous hurt to the complainant, Eric Esme Monteiro. Furthermore, there could be no doubt on the evidence, if it was believed,

that the accused inflicted such grievous hurt with a length of iron piping which, if used as a weapon of offence (as it undoubtedly was), clearly is an instrument likely to cause death.

After going through the record, to my mind all that is doubtful is how the Magistrate arrived at the rest of his conclusion. I do not consider it necessary here to review the evidence on record, but in my view there are ample evidence from trustworthy witnesses (1) that the origin and cause of the fight between the complainant and the accused in the course of which the complainant sustained his injuries was the accused's sudden, premeditated and unprovoked attack upon the complainant with the iron piping; and (2) that the complainant, if he in fact drew his penknife in the course of the fight, as to which, it will be noted, he was not asked any questions by the accused in cross-examination, drew it only after the accused, together with some other persons who had joined in to help him, had attacked and injured the complainant with the iron piping.

In my opinion, there was a *prima facie* case under section 326 of the Penal Code made out by the prosecution against the accused, and accordingly the Magistrate was bound to commit him for trial.

For these reasons I set aside the order of the Magistrate, and I direct him to draw up a charge under section 326 of the Penal Code against the accused and to commit him for trial thereon to the Court of a Judge.

Before parting with the case I think it right to say that the observations made by the Magistrate at the conclusion of the inquiry appear to show some confusion as to the duties of a Magistrate when holding an inquiry under Chapter XVII of the Criminal Procedure Code. When all the evidence has been taken, the Magistrate's duty simply is to inquire, has a *prima facie* case been made out against the accused by credible evidence? If the answer to this question is in the affirmative, then the Magistrate is bound to commit the accused for trial. On the other hand, if the answer is in the negative, the Magistrate is bound to discharge the accused, unless the evidence discloses an offence over which he has jurisdiction in which case he may either deal with it himself or order it to be tried by another Magistrate. It is no part of the inquiring Magistrate's duty to consider possible lines of defence to the charge which the accused may raise in the course of the inquiry or to decide whether there are sufficient grounds for *convicting* the accused. That is the function of the trial Court. Adopting the language of Batchelor J. in *In re Bai Parvati*[1], it is a safe rule that where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving the doubt and assessing the evidence should be left to the Court of a Judge.

Order accordingly.

JACKSON & CO. LTD. v. SENG SENG; JAGAT SINGH & CO. (Claimants)

[O. C. J. (Spenser Wilkinson J.) October 29, 1954]

[Penang — Civil Suit No. 60 of 1954]

Bills of Sale Ordinance (Cap. 61), s. 6, Schedule A — Variation from form laid down — Interpretation and General Clauses Ordinance, 1948, s. 7 — Validity.

Section 6 of the Bills of Sale Ordinance must be read subject to s. 7 of the Interpretation and General Clauses Ordinance so that slight deviations therefrom not affecting the substance or calculated to mislead shall not invalidate a bill of sale.

Cases referred to:—

(1) *Official Assignee v. Koh Kam Neo* (1898), 5 S.S.L.R. 70 at 75.

(2) *Aroonasallam Chetty v. Tay Heng Lee & Anor.* (1906), 10 S.S.L.R. 92.

(3) *Menatchy v. Trusty* (1895), 3 S.S.L.R. 12 at 18.

(4) *Hussain v. Chanda Singh* (1935) M.L.J. 262.

INTERPLEADER SUMMONS.

R. D. Hume for the claimants.

F. G. Pooley for the Execution creditors.

Cur. Adv. Vult.

The facts and arguments appear sufficiently from the judgment.

Spenser Wilkinson J. : —This is an Interpleader Summons involving the validity of a bill of sale, the sole question being whether certain minor variations from the form laid down render the bill of sale void under Section 6 of the Bills of Sale Ordinance which renders a bill of sale void "if it is not made in the form of Schedule A".

The actual variations in the bill of sale in question from the exact wording of the form laid down are as follows:—

(i) The date is given as "the 18th day of May in the year one thousand nine hundred and fifty three (1953)" whereas according to the form it should be "the day of , 19 ," so that the words indicating the year and the brackets round the 1953 might be said to be a variation;

(ii) The expression "motor cars" has been inserted in place of the word "chattels" in the form; and

(iii) The sum involved is written in the bill as "dollars twelve thousand and five hundred ($12,500)" instead of (as in the form) "twelve thousand and five hundred dollars".